IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 292/06
(Vijay Dan Detha @ Bijji & Ors. Vs. State of Rajasthan)

Date of Order : 26/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Vikram Purohit for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Ramesh Purohit with Dr. S.Kala for the complainant.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 3.2.2006 passed by Additional Chief Judicial Magistrate, Bilara (for short 'the trial court' hereinafter), whereby the trial court took the cognizance of the offence under Sections 467, 468, 471, 420 and 120B IPC and issued process against the present petitioners.

I have heard learned counsel for the petitioners. Carefully gone through the order passed by the trial court.

There are allegations against the present petitioners that they have forged power of attorney executed by the complainant non-petitioner No.2. Complainant non-petitioner No.2 Prashant Kothari lodged a report with the police inter-alia

alleging therein that he is Khatedar of agriculture land bearing Khasra No. 1798/10 measuring 17 bighas recorded in the revenue records, however, he executed a power of attorney in favour of the petitioner No.1 Vijay Dan Datha in respect of land measuring 17 biswas which is less than a bigha. The power of attorney was neither attested nor registered with the registering authority, even it was not attested by the Notary Public. The petitioners forged the power of attorney and in place of 17 biswas which was originally typed in the power of attorney at the time of its execution and signature by the complainant, 17 bighas has been made and on the basis of forged power of attorney got transferred the entire agriculture land of the complainant measuring 17 bighas in favour of family members of petitioner No.1. The matter was investigated. During investigation, the power of attorney in question was sent to the Forensic Science Laboratory to be examined by the expert and the expert opinion from the Forensic Science Laboratory has been received wherein it is mentioned that originally in the document power of attorney it was '17 biswas' typed, whereas that has been forged by making it '17 bighas' and this alteration is after the execution of the document and therefore, prima-facie the document was found to be forged. Yet the police filed a final report on the ground that the matter is of a civil nature. The trial court on careful perusal of the material available on record

and keeping in view the statement of witnesses namely Prashant Kothari the complainant, Babulal Borana the Notary Public who attested the power of attorney subsequent to its execution and the witness Om Singh Rajpurohit in whose presence the original power of attorney was signed by the complainant, prima-facie came to the conclusion that the power of attorney even after having been signed by the executant the complainant and attested by the Notary Public, subsequent thereto has been forged. The statement of Babulal Borana the Notary Public has been recorded by the police and he stated that when he attested the power of attorney, it was typed therein 17 biswas and subsequent thereto 17 bighas has been typed in place of 17 biswas. Keeping in view, the prima-facie evidence available on record, the trial court took the cognizance of the offence and issued the process.

It is settled law that even where civil consequence are involved and from the material on record and the factual foundation, the essential ingredients of the criminal offence are made out, then the criminal proceeding as well as the civil proceeding can go simultaneously.

In Alpic Finance Ltd. Vs. P. Sadasivan & Anr., (2001) 3 SCC 513, the Hon'ble Supreme Court held that merely because remedy by way of civil suit is available, is not an impediment in maintaining a criminal complaint provided the complaint

discloses the ingredients of the offence alleged. The Apex Court further observed that in transaction involving passing of valuable properties between the parties, the aggrieved party may sue for damages and also file a complaint against the wrongdoer for criminal breach of trust or cheating, but the complaint must disclose essential ingredients of the offence.

In M. Krishnan Vs. Vijay Singh & Anr., (2001) 8 SCC 645, the Hon'ble Supreme Court observed that mere pendency of the civil suit between the parties cannot be a ground for quashing the criminal proceedings against the accused. The Apex Court observed that if mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings and such a course cannot be the mandate of law. The Apex Court further held that in a criminal court, the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. The Apex Court further held as under:-

> "Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the

> facts narrated reveal the existence of commercial or money transaction between the parties. The revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report do not prima facie disclose the commission of an offence or the allegations are so absurd or inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

At the time of taking cognizance, the Magistrate has to be satisfied whether there is sufficient ground for proceeding further or not, whether there is sufficient ground for conviction, whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry or taking cognizance of offence and issuing process.

In M/s India Carat Pvt. Ltd., Vs. State of Karnataka and another AIR 1989 SC 885 Hon'ble Supreme Court held that the Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under S. 190 (1)

(b) and direct the issue of process to the accused.

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

This view was reiterated by Hon'ble Supreme Court in Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others (2004) 7 SCC 768 wherein Hon'ble Apex Court held that on the report forwarded by police to the Magistrate that no case made out against accused, the Magistrate can ignore the

conclusion arrived at by the Investigating Officer and can independently apply his mind to the facts emerging from investigation and take cognizance, if he thinks fit by exercising powers under S. 190 (1)(b) Cr.P.C.

It is settled law that powers under Section 482 Cr.P.C. are to be exercised sparingly, consciously and in exceptional cases where it is brought to the Court that the order impugned would result in serious miscarriage of justice or abuse of the process of the Court. In the instant case, from the material available on record, it cannot be said that the order taking cognizance would result in serious miscarriage of justice or abuse of process of the Court warranting interference in the inherent jurisdiction.

In view of the aforesaid discussion, I do not find any merit in the criminal misc. petition. The criminal misc. petition is dismissed accordingly. Ad interim stay order dated 24.3.2006 stands vacated.

(H.R.PANWAR),J.

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